

Amendment No. 2 to HB1278

Sargent
Signature of Sponsor

AMEND Senate Bill No. 1205

House Bill No. 1278*

by deleting all language after the enacting clause and by substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Title 11, Chapter 11, is amended by adding the following language as a new, appropriately designated part:

11-11-201.

This part shall be known and may be cited as the “Tennessee Adventure Tourism and Rural Development Act of 2011.”

11-11-202.

The department of economic and community development, in cooperation with the department of environment and conservation, is directed to study and develop a plan for the promotion and development of adventure tourism and other recreational and economic development activities in rural areas of Tennessee. Such study and plan shall be developed within existing departmental resources. The departments are directed to consider natural areas, best available science, existing recreational opportunities, economic conditions, including but not limited to persistent high unemployment, safety and environmental issues, and community interest in developing such plan. Such plan should include recommendations on whether and to what extent existing laws should be amended and any new laws should be enacted in order to encourage development of adventure tourism in Tennessee. The departments

are authorized to promulgate rules and regulations in order to effectuate the purposes of this part.

11-11-203.

As used in this part, unless the context otherwise requires:

(1) "Adventure tourism" means outdoor recreational opportunities such as equine and motorized trail riding, white-water rafting and kayaking, rappelling, road biking, rock climbing, hang-gliding, spelunking, shooting sports, mountain biking, canoeing, paragliding, zip lining and other such activities;

(2) "Adventure tourism district" means a defined geographic area identified and authorized by a two-thirds (2/3) vote of a local governing body and approved by the department and the department of environment and conservation as an area where the promotion of adventure tourism is encouraged;

(3) "All-terrain vehicle" means either:

(A) A motorized vehicle with no less than four (4) non-highway tires, but no more than six (6) non-highway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000 cc) or less and in total dry weight to less than one thousand five hundred pounds (1,500 lbs.), and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control;

(B) A motorized vehicle with not less than four (4) non-highway tires, nor more than six (6) non-highway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000 cc) or less and in total dry weight up to two thousand

pounds (2,000 lbs.), and that has a non-straddle seating and a steering wheel;

(C) A motor vehicle as defined in § 55-1-103, which possesses a four (4) wheel drive capability and that is designed and suitable for operation off the highway on natural terrain; or

(D) A motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, or other natural terrain and not intended for use on public roads traveling on two (2) wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control;

(4) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(A) The qualified business enterprise or enterprises made within or adjacent to an adventure tourism district is a result of the special allocation and tax credits provided for in Section 5; and

(B) The adventure tourism district is a result of such qualified business enterprise or enterprises.

(5) "Canoeing" means the use of canoe for navigation of waterways;

(6) "Department" means the department of economic and community development;

(7) "Hang-gliding" means an air sport in which a pilot flies a light and un-motorized aircraft launched by foot;

(8) "Kayaking" means the use of a kayak for navigations of waterways;

(9) "Local governing body" means the elected legislative body of a municipal, metropolitan or county government;

(10) "Motorized trail riding" means the exploration of trails and natural areas by use of all-terrain vehicles;

(11) "Mountain biking" means the exploration of trails and natural areas by the use of bicycles;

(12) "Paragliding" means the air sport in which a pilot flies a light motorized aircraft that uses a parachute to stay airborne;

(13) "Rappelling" is the controlled descent down a rope by climbers used to explore cliffs or slopes that are too steep to descend without protection;

(14) "Road biking" means both non-competitive and competitive bicycling events that take place on improved roads;

(15) "Rock climbing" means the recreational sport of climbing up or across natural rock formations;

(16) "Shooting sports" means the recreational sport of firing handguns, rifles or shotguns at moving or fixed targets;

(17) "Spelunking" means the recreational sport of exploring noncommercial cave systems;

(18) "Triathlon" means the recreational activity of sporting contests involving open waters swimming, bicycle riding, and running, whether on trails or improved roads;

(19) "White water rafting" means the recreational activity of using an inflatable raft or kayak to navigate rough water; and

(20) "Zip lining" means the exploration of natural areas by use of above-ground cable systems.

11-11-204.

(a) A local governing body, may, by a two-thirds (2/3) vote of its governing body, authorize the creation of a district within the boundaries of such governing body as an adventure tourism district by developing an adventure tourism district plan. Alternatively, one (1) or more counties or one (1) or more municipalities may enter into an intergovernmental agreement pursuant to the Interlocal Cooperation Act, compiled in title 12, chapter 9, to designate jointly an adventure tourism district that contains area within the boundaries of more than one (1) local government.

(b) Adventure tourism professionals may petition local governing bodies to authorize the creation of an adventure tourism district. Such petition shall be accompanied by specific business plans based on quantifiable data demonstrating that the creation of an adventure tourism district would enhance sustainable economic development in the area.

(c) Upon a local governing body or bodies authorizing the creation of an adventure tourism district, the adventure tourism district plan shall be submitted to the department of economic and community development and the department of revenue for joint approval as an adventure tourism district. Such approval shall be granted if the commissioner of economic and community development and the commissioner of revenue determine that the allocation of franchise and excise tax credits are in the best interest of the state.

(d) Following the approval of the department of economic and community development and the department of revenue for an adventure tourism district pursuant to subsection (c), a local governing body may submit the adventure tourism district plan to:

(1) The department of revenue and the department of economic and community development for approval of tax credits pursuant to §67-4-2109; and

(2) The department of tourist development for promotional support through use of the department's existing resources.

11-11-205.

(a) Unless an adventure tourism professional or business acts intentionally or with gross negligence or is in violation of this part, or any other laws, ordinances, resolutions, rules or regulations pertaining to adventure tourism, which intentional or grossly negligent act or omission or violation is causal of the injury complained of, no action shall lie against any such professional or business by any adventure tourism activity participant or representative of an adventure tourism activity participant; this prohibition shall not, however, prevent the maintenance of an action against an adventure tourism professional or business for negligent design construction or operation maintenance.

(b) Each adventure tourism professional or business shall maintain general liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.

(c) Each adventure tourism professional or business shall post and maintain signs that contain the warning notice specified in subsection (d). The signs shall be placed in clearly visible locations at such businesses. The warning notice specified in subsection (d) shall appear on the sign in black letters, with each letter to be a minimum of one inch (1") in height. In addition to any other waivers or warnings signed by participants, every written contract entered into by an adventure tourism professional or business for the providing of professional

services, instruction, or the rental of equipment to a participant, whether or not the contract involves activities on or off the location or site of the adventure tourism professional's business, shall contain in clearly readable print the warning notice specified in subsection (d).

(d) The signs and contracts described in subsection (c) shall contain the following warning notice:

WARNING

Under Tennessee Law, an adventure tourism professional is not liable for an injury to or the death of a participant in adventure tourism activities resulting from the inherent risks of such activities, pursuant to Tennessee Code Annotated, Title 11, Chapter 11.

(e) No action shall be maintained against an adventure tourism professional or business complying with this section unless such action is commenced within one (1) year from the date of injury.

11-11-206.

The department of environment and conservation and the department of economic and community development may work together to provide assistance as deemed appropriate by the departments to encourage the development of adventure tourism within those regions of the state designated as suitable for such activities and where persistent high unemployment exists.

SECTION 2. Tennessee Code Annotated, Section 55-8-101, is amended by adding the following language as a new, appropriately designated subdivision:

() "All-terrain vehicle" means either:

(1) A motorized non-highway tire vehicle with no less than four (4) non-highway tires, but no more than six (6) non-highway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000

cc) or less and in total dry weight to less than one thousand five hundred pounds (1,500 lbs.), and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control;

(2) A motorized vehicle with not less than four (4) non-highway tires, nor more than six (6) non-highway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000 cc) or less and in total dry weight up to two thousand pounds (2,000 lbs.) and that has a non-straddle seating and a steering wheel; or

(3) A motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, or other natural terrain and not intended for use on public roads traveling on two (2) wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control;

SECTION 3. Tennessee Code Annotated, Section 55-8-185, is amended by adding the following as new, appropriately designated subsections:

(e) In addition to the provisions above, notwithstanding any provision of law to the contrary, an all-terrain vehicle as defined in § 55-8-101 may be operated or driven upon any unpaved streets, roads, or highways, as designated specifically for such purpose upon two-thirds (2/3) vote by the local governing body, and included within the boundaries of an adventure tourism district established pursuant to Section 1 of this act, if such all-terrain vehicle complies with the following:

(1) The governing body of a municipality or metropolitan government may regulate in any manner, by lawfully enacted ordinance, the operation of any all-terrain vehicle crossing of a street, road or highway solely under the municipality's jurisdiction; provided, that such

municipality provides written notification to the department of safety prior to the effective date of the ordinance and posts appropriate signage designating such all terrain vehicle crossing on such street, road or highway;

(2) The governing body of any county may by lawfully enacted resolution regulate the operation of all-terrain vehicles on any street, road or highway solely under the county's jurisdiction; provided, that such county provides written notification to the department of safety prior to such resolution becoming effective and posts appropriate signage designating such street, road or highway for all-terrain vehicle use;

(3) An all-terrain vehicle is specifically restricted to only between one-half (1/2) hour after sunrise and one-half (1/2) hour before sunset, and the headlight and taillight shall be illuminated during such operation;

(4) The operator and all passengers of an all-terrain vehicle shall wear a helmet while driving or operating such vehicle on a street, road or highway;

(5) Any additional safety requirements imposed by the local governing body for all-terrain vehicle operation on street, roads or highways in such municipality, metropolitan government or county; and

(6) No all-terrain vehicles shall be operated on any state highway or any highway that is a part of the interstate and defense highway system.

(f) Operation of the following all terrain vehicles shall be exempt from subsection (e):

(1) All terrain vehicles operated for agricultural purposes; and

(2) Publicly-owned and operated all terrain vehicles that are used for management, law enforcement, emergency services and other such purposes.

SECTION 4. Tennessee Code Annotated, Section 67-4-2109(a)(5)(A), is amended by deleting the language "or convention or trade show facilities;" in its entirety and by substituting instead the following language:

convention or trade show facilities, or tourism related businesses including, but not limited to, restaurants, lodging establishments, or other tourism related attractions;

SECTION 5. Tennessee Code Annotated, Section 67-4-2109(b)(2), is amended by adding the following language as a new subsection:

(C) If the qualified business enterprise is located in area designated as an adventure tourism zone pursuant to § 11-11-204(c), an annual credit shall be allowed as follows:

(i) The additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created;

(ii) The additional annual credit shall equal four thousand five hundred dollars (\$4,500) for each qualified job; provided, that the job remains filled by employees during the year in which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated;

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.